

## Internal Revenue Service

Number: **201232015**

Release Date: 8/10/2012

Index Number: 1502.75-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:CORP:01

PLR-143010-11

Date:

May 03, 2012

## LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

State A =

Date 1 =

Dear \_\_\_\_\_ :

This letter is in response to a letter dated October 13, 2011, submitted on behalf of Parent, requesting that the Commissioner make a determination under § 1.1502-75(b) of the Income Tax Regulations that Sub 1 through Sub 6, hereinafter referred to as the "Omitting Subsidiaries", have joined in the making of the initial consolidated Federal income tax return filed by Parent for the taxable year ending on Date 1. Additional information was submitted in letters dated March 9, 2012, April 17, 2012, and April 30, 2012. The material information submitted is summarized below.

### SUMMARY OF FACTS

Parent is a State A corporation and the common parent of an affiliated group (the "Parent Group") that prior to the taxable year ending Date 1, did not file a valid consolidated Federal income tax return. For the taxable year ending Date 1, the Parent Group consisted of Parent and the Omitting Subsidiaries. The Parent Group filed a consolidated Federal income tax return (the "Initial Consolidated Return") for the taxable year ending Date 1. However, the consolidated return failed to include Form 1122, Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return, for each of the Omitting Subsidiaries.

### REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to file timely Forms 1122 by the Omitting Subsidiaries, Parent and the Omitting Subsidiaries were eligible to join in filing a consolidated return, with Parent as the common parent, for the taxable year ending on Date 1.
- (b) All of the items of income, gain, loss, and deduction of Parent and the Omitting Subsidiaries for the taxable year ending Date 1 were included in the Initial Consolidated Return.
- (c) None of the items for any member of the Parent Group for the taxable year ending on Date 1 were reported on a separate return (within the meaning of § 1.1502-1(e)).
- (d) The members of the Parent Group were included on the Form 851, Affiliations Schedule, attached to the Initial Consolidated Return.

### APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502, in accordance with § 1.1502-75(b). If a group wishes to exercise its privilege of filing a

consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, § 1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For the taxable year relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by § 1.6001-1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2) of this section.

### RULING

Based solely on the information submitted and the representations made, we rule that for purposes of § 1.1502-75(h)(2), each of the Omitting Subsidiaries shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending on Date 1 and each of the Omitting Subsidiaries shall be treated as having joined in the making of the consolidated return for such year (§ 1.1502-75(b)(2)).

### PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon facts and representations submitted by

the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: